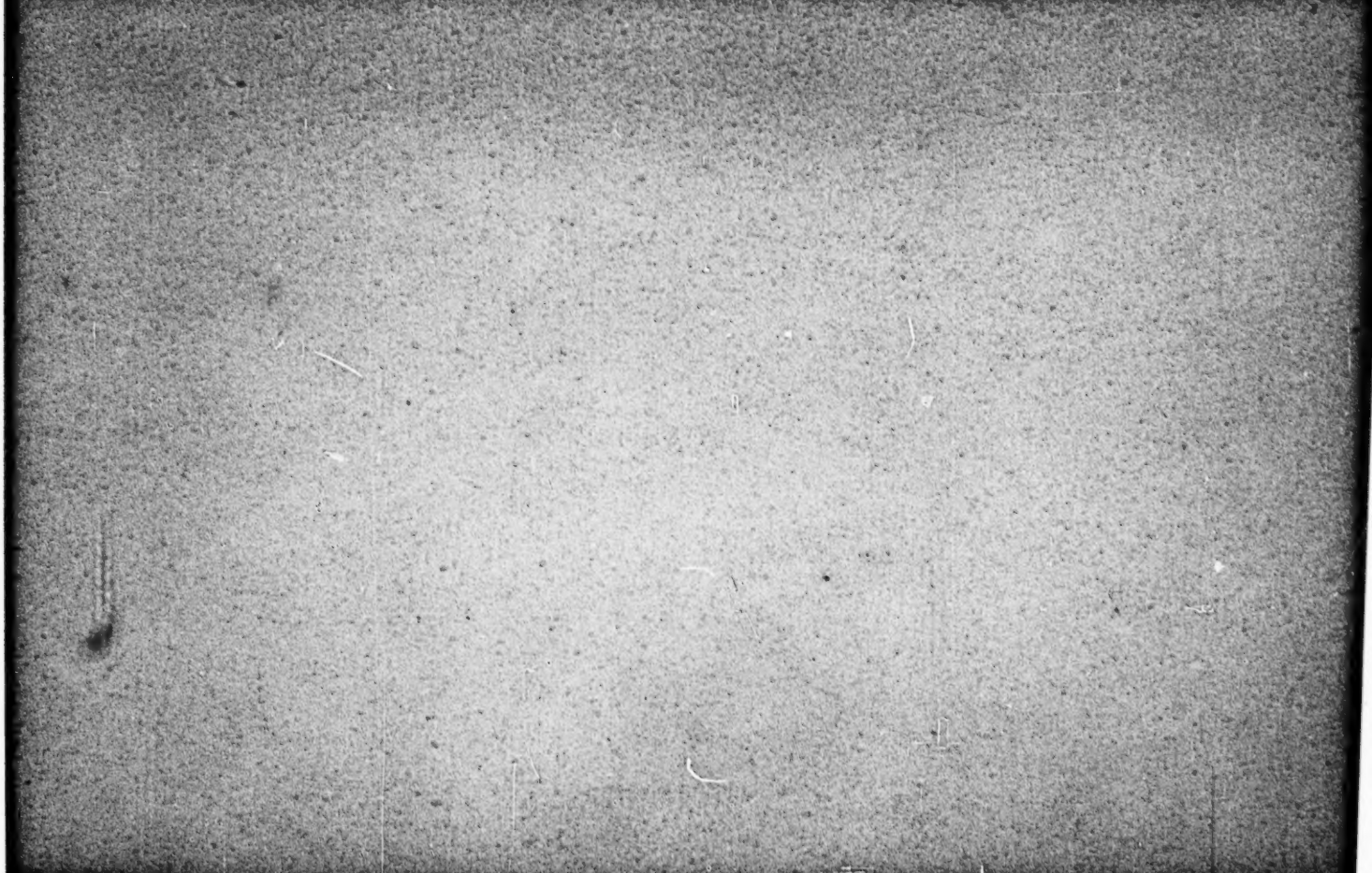

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1974

No. 74-111

EDMOND PFOTZER AND E. JOHN PFOTZER,

Petitioners,

against

CITY OF NORWALK AND ENGINEERS ET AL,

Respondents.

PETITION FOR REHEARING

E. John Pfotzer and Edmond Pfotzer
Petitioners pro se
P.O. Box 987, Wilmington, De 19899

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PETITION FOR REHEARING

To the Justices of the Supreme Court of the United States:

Petitioners respectfully petition this Court to rehear the petition for certiorari on the following substantial grounds not previously presented, pursuant to R.58, subd.2 (Schriber-Schroth Co. v. Cleveland Trust Co., 305 U. S. 47, 50, 59 S.Ct. 8, 9).

An inter-circuit conflict is presented by the decision of the Second Circuit in the case at bar (affirming the District Court's refusal to enforce the settlement relied on by petitioners) and the decision of the Third Circuit in Green v. John H. Lewis & Co. (3 civ. 1970), 436 F. 2d 389, 390, wherein the Third Circuit held, per curiam CALDISERT, ADAMS, ROSENN, C. J.), that:

> "An agreement to settle a law suit, voluntarily entered into, is binding upon the parties, whether or not made in the presence of the Court, and even in the absence of a writing * * * "

Petitioners, in accord with R.58, further respectfully petition this Court to rehear their petition for writ of certiorari on the following substantial grounds:

Petitioners state that the record herein shows that counsel for one of the several respondents attempted to serve a copy of his BRIEF IN OPPOSITION" on November 14, 1974, via Registered Mail, Special Delivery, addressed to petitioners P. O. Box 987, Wilmington, Delaware. Further, the record shows (by affidavit) that a required notice of arrival of the copy of

said brief was not placed in petitioners' P. O. Box 987, Wilmington, Delaware by U. S. Postal Service personnel until December 7, 1974, a delay of 23 days, and as extending beyond November 30, 1974 the filing date for petitioners' "REPLY BRIEF".

As a consequence of the aforesaid dereliction by the U. S. Postal Service these petitioners, through no fault of their own, were thus precluded, because of the 23 day delay supra, from timely filing their "REPLY BRIEF" in opposition to several erroneous statements which petitioners assert are contained in respondent's brief supra. Whereupon these petitioners immediately placed the Clerk of this Court on written notice of the involved facts supra, and collaterally informed the Clerk, that as a result of the 23 day delay petitioners would be denied an opportunity to file their reply to respondent's brief supra, unless they were granted an enlargement of time; and additively petitioners filed a written request for a reasonable enlargement of time to file their "REPLY BRIEF".

Despite the foregoing recital of facts, these petitioners were nonetheless denied such enlargement of time, and were correlatively informed that the Court had, in the meanwhile, December 9, 1974, denied their petition for a writ of certiorari. Petitioners accordingly respect-

fully submit to this Honorable Court that as a consequence of the stated facts, and through no fault of their own, their petition had in substance been "denied due process of law."

Petitioners pertinently assert, that the totality of petitioners' foregoing statements may be readily corroborated by the Court's reference to petitioners' several communications as were addressed to the Clerk of this Court, and as respectively dated - letter December 8, 1974, telegram December 9, 1974 and letter December 9, 1974. Petitioners respectfully submit that the recited facts supra, in themselves constitute such substantial ground as should mandate a rehearing of the petition herein.

Petitioners respectfully invite the Court's attention to the fact that the foregoing request for rehearing is also made in consideration of other important related facts of record. Namely, that on October 16, 1974, well after the date in which all respondents' briefs should have been filed with the Court, the Clerk of the Court, apparently on his own volition, wrote to the several respondents, and without their prior intercession, voluntarily extended and made available to them a thirty day enlargement of time within which to file their prospective briefs, despite the fact that one group of the respondents had previously in writ-

ing irrevocably waived its right to file a brief in opposition. Nevertheless the Clerk of the Court voluntarily proceeded to grant an enlargement of time for respondent to file a "BRIEF IN OPPOSITION" and accepted same despite respondent's prior irrevocable waiver, all to the great prejudice of petitioners' cause. However, in contrast thereto, when subsequently these petitioners, requested a short enlargement of time to file their intended "REPLY BRIEF", as made necessary solely by reason of the failure of the United States Postal Service supra, in not providing these petitioners necessary notice of the arrival of said brief, these petitioners were summarily denied such right, as otherwise provided by applicable rules. Such denial followed petitioners' immediate application to the Clerk of the Court for enlargement of time, but who responsively promptly informed petitioners that their request for an enlargement of time was untimely, and particularly inasmuch as this Court's decision denying their petition for a writ of certiorari had, unknown to petitioners, already been made.

In view of the foregoing, it is respectfully submitted that in this most unusual situation, the reasonable discretion of this Honorable Court, should following its consideration of the involved facts, provide these petitioners an opportunity to file a "REPLY BRIEF", even as was voluntarily accorded adversary counsel by this Court, supra, and such to the end that petitioners cause herein should not otherwise be inequitably prejudiced.

WHEREFORE petitioners respectfully petition this Court to rehear the petition herein, and, on such rehearing being had, prays for reversal of the judgment below and for such other and further relief as may be just.

Respectfully submitted,

E. John Pfotzer

E. John Pfotzer

Edmond Pfotzer

Petitioners pro se

Certificate of Petitioners

Petitioners hereby certify that this petition for rehearing is presented in good faith and not for delay and further certify that the petition is restricted to the grounds set forth in R.58, subd.2.

E. John Pfotzer

E. John Pfotzer

Edmond Pfotzer

Petitioners pro se